

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

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4 EMMANUEL CHEATHAM,  
5 Plaintiff,

6 v.

7 GILLESPIE, *et al.*,  
8 Defendants.

Case No. 2:14-cv-01166-APG-PAL

**ORDER DISMISSING CASE  
WITHOUT PREJUDICE**

(ECF Nos. 27, 29, 30, 31, 32, 33)

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11 On September 30, 2016, Magistrate Judge Leen entered a report and recommendation  
12 recommending that I dismiss this action without prejudice for failure to timely serve process. ECF  
13 No. 27. The case has been pending since July 2014 and the plaintiff has not served the  
14 defendants despite being given multiple opportunities for a year and a half. ECF Nos. 8, 13, 14,  
15 26. Judge Leen eventually ordered plaintiff Emmanuel Cheatham to show cause why this matter  
16 should not be dismissed for failure to effect service of process on the defendants by the extended  
17 service deadline. ECF No. 26. Judge Leen warned Cheatham that failure to timely respond would  
18 result in a recommendation that the case be dismissed without prejudice. ECF 26 at 4. Cheatham  
19 did not respond. Judge Leen therefore issued her report and recommendation.

20 Cheatham objects, stating that he has not received all his mail, he has tried to comply with  
21 the court's orders, and that he is pro se and unsure of how to proceed. He also asserts, in an  
22 untimely objection, that failure to timely serve should be excused where the U.S. Marshal does  
23 not timely serve on his behalf.

24 I conducted a de novo review of the issues set forth in the report and recommendation. 28  
25 U.S.C. § 636(b)(1). Judge Leen sets forth the proper legal analysis and factual basis for the  
26 decision. The U.S. Marshal has repeatedly attempted service based on the information Cheatham  
27 has provided but those attempts have been unsuccessful. Cheatham was advised if the U.S.  
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1 Marshal was unable to serve the defendants, then he “must file a motion with the Court specifying  
2 a more detailed name and/or address for said defendant(s), or whether some other manner of  
3 service should be attempted.” ECF No. 14 at 3. Cheatham has not given any further information  
4 and he has not moved for some other manner of service. Cheatham requests another extension of  
5 the service deadline but he does not state what new information he would provide the U.S.  
6 Marshal for service or what other tactic he may employ to effect service. Consequently, no  
7 purpose would be served by another extension of the deadline. I therefore accept Judge Leen’s  
8 recommendation and dismiss this action without prejudice.

9 Cheatham also moves for counsel to be appointed. A district court “may request an  
10 attorney to represent any person unable to afford counsel.” 28 U.S.C. § 1915(e)(1). Whether to  
11 appoint counsel lies within my discretion. *Agyeman v. Corr. Corp. of Am.*, 390 F.3d 1101, 1103  
12 (9th Cir. 2004). To determine whether exceptional circumstances exist to support appointing  
13 counsel, I evaluate “the likelihood of the plaintiff’s success on the merits” and “the plaintiff’s  
14 ability to articulate his claims ‘in light of the complexity of the legal issues involved.’” *Id.*  
15 (quoting *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)). Cheatham has  
16 demonstrated an ability to articulate his claims, and the legal issues are not complex. I decline to  
17 appoint counsel.

18 Finally, Cheatham requests copies of various documents in this case. I will grant his  
19 request to have the clerk of court send him copies of ECF Nos. 3, 8, 13, 14, 16, 22, 24, and 26.

20 IT IS THEREFORE ORDERED that Magistrate Judge Leen’s report and recommendation  
21 **(ECF No. 27) is accepted**, plaintiff Emmanuel Cheatham’s **objections (ECF Nos. 29, 31) are**  
22 **overruled**, and plaintiff’s motion to alter or amend the judgment **(ECF No. 32) is denied. This**  
23 **case is DISMISSED without prejudice.**

24 IT IS FURTHER ORDERED that plaintiff Emmanuel Cheatham’s motion to inform  
25 **(ECF No. 30) is GRANTED. The clerk of court shall send plaintiff Emmanuel Cheatham**  
26 **copies of ECF Nos. 3, 8, 13, 14, 16, 22, 24, and 26.**

1 IT IS FURTHER ORDERED that plaintiff Emmanuel Cheatham's motion for  
2 appointment of counsel **(ECF No. 33) is DENIED.**

3 DATED this 5<sup>th</sup> day of December, 2016.

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6 ANDREW P. GORDON  
7 UNITED STATES DISTRICT JUDGE  
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